

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

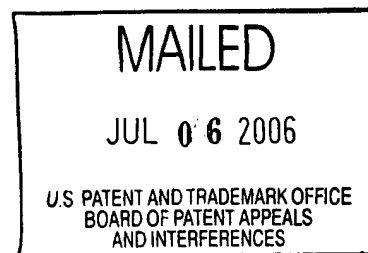
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID W. FULLER, SUNDEEP CHANDHOKE, CHRISTOPHER CIFRA,
and NICOLAS VAZQUEZ

Appeal No. 2006-1475
Application No. 10/021,728

ON BRIEF



Before HAIRSTON, JERRY SMITH, BARRY, **Administrative Patent Judges.**

JERRY SMITH, **Administrative Patent Judge.**

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's rejection of claims 1-4, 7-21, 24-32 and 34-55, which constitute all the claims pending in this application.

The disclosed invention pertains generally to a graphical programming development environment operable to aid a user in creating a graphical program by determining and indicating suggested nodes and/or user interface elements to include in the graphical program.

Representative claim 1 is reproduced as follows:

1. A computer-implemented method for creating a graphical program, the method comprising:

receiving user input selecting one or more nodes to include in the graphical program from at least one first palette, wherein the at least one first palette presents a plurality of all available nodes for selection;

including the one or more selected nodes in the graphical program: and

displaying one or more suggested nodes to include in the graphical program in a second palette, based on the one or more nodes selected by the user input, wherein the second palette is separate from the at least one first palette, and wherein the one or more suggested nodes are selectable by the user for inclusion in the graphical program.

The examiner relies on the following references:

Choy et al. (Choy)	5,506,952	Apr. 09, 1996
Sojoodi et al. (Sojoodi)	5,784,275	July 21, 1998
Thomsen et al. (Thomsen)	6,064,409	May 16, 2000

Claims 1-4, 7-10, 17-21, 24-26, 31-35, 38, 39, 42-50, 54 and 55 stand rejected under 35 U.S.C. § 102(b) as being anticipated by the disclosure of Sojoodi. Claims 11-16, 27-30, 36, 37 and 51-53 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the teachings of Sojoodi in view of Choy. Claims 40 and 41 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the teachings of Sojoodi in view of Thomsen.

Rather than repeat the arguments of appellants or the examiner, we make reference to the briefs and the answer for the respective details thereof.

OPINION

We have carefully considered the subject matter on appeal, the rejections advanced by the examiner and the evidence

Appeal No. 2006-1475
Application No. 10/021,728

of anticipation and obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellants' arguments set forth in the briefs along with the examiner's rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer.

It is our view, after consideration of the record before us, that the evidence relied upon does not provide the necessary support for any of the examiner's rejections. Accordingly, we reverse.

We consider first the rejection of claims 1-4, 7-10, 17-21, 24-26, 31-35, 38, 39, 42-50, 54 and 55 as being anticipated by the disclosure of Sojoodi. Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention as well as disclosing structure which is capable of performing the recited functional limitations. RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir.); cert. dismissed, 468 U.S. 1228 (1984); W.L. Gore and Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

The examiner has indicated how the invention of these claims is deemed to be fully met by the disclosure of Sojoodi

[answer, pages 3-6]. With respect to claims 1-4, 10, 18-21, 26, 31 and 34, which are argued as a single group, appellants argue that the examiner has mischaracterized the palettes shown in figure 7 of Sojoodi. Specifically, appellants argue that the palettes in Sojoodi are not displayed in the manner recited in claim 1. Appellants assert that the nodes displayed in Sojoodi in the palette at the end of the hierarchy that the user navigates down are not suggested nodes at all, but instead, are all the nodes in the category which the user requested to be displayed. Appellants also argue that the nodes displayed in Sojoodi are not based on one or more nodes that the user selected to include in the graphical program. Finally, appellants argue that the examiner has taken one of the palettes displayed in figure 7 of Sojoodi to mean the claimed second palette, but that such interpretation is not logically compatible with the combination of elements recited in claim 1 [brief, pages 7-9]. The examiner responds that on the basis of an ongoing activity of node entry in Sojoodi, a palette can be repeatedly invoked after each item has been input by the user's drag and drop manipulation. The examiner asserts that when this happens, the completion of one entry is the basis for the palette's re-appearance, and within it are those further nodes that are suggested as those from which the user may make a subsequent choice. The examiner responds that the items appearing in

Sojoodi constitute suggestions for further entry based on one or more nodes that the user selected because the palette display occurs subsequent to the completion of a previous node entry. Finally, the examiner responds that it is the overall generation of the Sojoodi palette after sequential node entry that meets the claimed invention [answer, pages 8-9]. Appellants respond that there is no teaching or suggestion in Sojoodi regarding a palette having suggested nodes, where the nodes are suggested based on nodes that the user has previously selected [reply brief, page 2].

We will not sustain the examiner's rejection of claims 1-4, 7-10, 17-21, 24-26, 31-35, 38, 39, 42-50, 54 and 55 for essentially the reasons argued by appellants in the briefs. We do not agree with the examiner's apparent interpretation of Sojoodi that the re-appearance of the palette shown in figure 7 of Sojoodi meets the claimed invention. First, as noted by appellants, each appearance of the palette in Sojoodi shows all the available items that can be selected, and showing all available items is not the same as showing suggested items. Second, the items displayed in the palette of Sojoodi are not "based on" or "in response to" the one or more nodes previously selected by the user. We do not agree with the examiner's position that the "suggested nodes" in Sojoodi are based on or in response to a previous selection because they occur subsequent to

the previous selection. The phrase "based on" or "in response to" requires more than a simple time relationship. We find that these phrases require a relationship such that the earlier event has an effect on what the later event is. We agree with appellants that the nodes displayed in Sojoodi are not based on a previous selection or determined in response to a previous selection.

We now consider the rejection of claims 11-16, 27-30, 36, 37, 40, 41 and 51-53 under 35 U.S.C. § 103. We will not sustain the examiner's rejection of any of these claims because the examiner's findings with respect to Sojoodi are incorrect for reasons discussed above and because neither Choy nor Thomsen overcomes the deficiencies of Sojoodi.

Appeal No. 2006-1475
Application No. 10/021,728

REVERSED

~~Kenneth W. Hairston~~
KENNETH W. HAIRSTON
Administrative Patent Judge

Jerry Smith
JERRY SMITH
Administrative Patent Judge

APPEALS AND INTERFERENCES

LANCE LEONARD BARRY
Administrative Patent Judge

JS / gw

Appeal No. 2006-1475
Application No. 10/021,728

MEYERSTONE, HOOD, KIVLIN, KOWERT & GOETZEL P.C.
GOETZEL, P.C.
700 LAVACA, SUITE 800
AUSTIN, TX 78701